Supreme Court, U.S.
FILED

99 111 JUL 12 1999

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Docket N0_____

IN THE SUPREME COURT OF THE UNITED STATES

Russell D, Mikel, *por se* **Ruth Allen**

Petitioners ***vs.*** ***Respondents***

Amy C. Mikel, *por se* **Mae Wendorf**

On Petition for a Writ of Certiorari to
The Supreme Court of Virginia
991995

PETITION FOR WRIT OF CERTIORARI

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24pp

THE QUESTION PRESENTED

Queston #1.

Are the mandatory provisions of 42 U.S.C. 4852d and related and supporting statutes and regulations which provides safeguards from lead-based paint hazard in targeted residential properties (dwellings with attached bedrooms) also mandatory for like commercial properties (properties with 0-bedrooms) and where there is no residential use and where no such use is contemplated?

Question #2.

If the answer to Question # 1 is in the negative, then, does it not follow that the judge in this case has based his judgment on a false legal premise supported by neither facts of record nor rules of law and is a nullity?

PARTIES WHOSE JUDGMENT IS SOUGHT FOR REVIEW

The Honorable Frank A. Hoss, presiding, Prince William County, Virginia, Circuit Court Chancery No. 42800, heard on July 15, 1998.

I

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1. Jurisdiction of the Court is invoked under Title 28, United States Code 1257(a)

2. Public Law 102-550

3. Title X of the Housing and Community Development Act of 1992.

4. 42 U.S.C. 4852d.

II

OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS

1. Findings and rulings of the Prince William County Virginia Circuit Court July 15, 1998 on the Bill of Complaint for Specific Performance. Finding was for the defendants.

2. Findings and ruling of the Prince William County Virginia Circuit Court August 28, 1998, on a Motion for Reconsideration. The motion was denied.

3. Refusal of a Petition for Appeal by the Supreme Court of Virginia February 12, 1999. In responce to the Petition for Appeal the court stated:

> "Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal the Court is of the opinion there is no reversable error. Accordingly, the Court refuses the petition for appeal."

4. Denial of Petition for Rehearing by the Supreme Court of Virginia April 16, 1999. Upon a Petition for Rehearing the Court stated:

> "On consideration of the petition of the appellants to set aside the

judgment rendered herein on the12th day of February, 1999 and grant a rehearing thereof, the prayer of the said petition is denied."

III

BASIS FOR JURISDICTION OF THE COURT

1. Dates of the Orders or Judgment Sought to be Reviewed:

a. This cases was heard in the Prince William County Virginia Circuit Court on July 15, 1998, Chancery Number 42800. The Court found for the defendants. The appellants took exception to the ruling at that time.

b. The final order of Chancery 42800 was signed by the circuit court judge August 28, 1998. At the same time the judge wrote on the order "seen and excepted to" and then the appellants each signed the objection. (see Annex A-2)

c. The plaintiffs filed a Petition for Appeal to the Supreme Court of Virginia on September 28, 1998, Record Number 981995.

2. Dates of Orders Respecting Rehearings:

a. The Plaintiffs filed a Motion for Rehearing of the Circuit Court ruling on August 12, 1998. The motion was heard on August 28, 1998 and denied. (seeAppendix B-1)

b. On February 25, 1999 the plaintiffs filed a Petition for Rehearing of the Petition for Appeal to the Supreme Court of Virginia of February 12, 1999, Control Number 981995. The petition was denied April 16, 1999. This is the last action. (see Appendix B-2)

3. The ruling on Chancery 42800 was excepted to by the plaintiffs in the circuit court, the record shows that all intrim actions to bring this before The United States Supreme Court were executed in a timely manner, and with the last action being dated April 16, 1999 and this petition being filed in less than 90 days from that date, it is submitted that this petition qualifies for review within the jurisdiction of the Supreme Court of the United States under the provisions of Rule 13.1.

IV

CONSTITUTIONAL AND STATUARY PROVISIONS INVOLVED

1. Residential Lead-Based Paint Hazard Reduction Act of 1992, Public Law 102-550, approved October 28, 1992 (Title X of the Housing and Community Development Act of 1992).

a. Department of Housing and Urban Development
24 CFR Part 36 Rin 2501-AB58. The relevant part of this act lies in the scope of its application. This is stated in a glossery of *Definitions.* Included is:

> **"(27) Target Housing--The term 'Target Housing' means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or 0-bedroom dwellings."**

b. Environmental Protection Agency, 40 CFR Part 745 (OPPTS-621130A; Fri/-5347-0)

RIN 2070-AC75. The scope of its application is cited in its glossery of definitions which state in Part 745-Lead-Based Paint Poisioning Prevention in Certain Residental Structures, Subpart 705-103 *Definitio*n, which state:

> **"*The Act* means the Residental Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d."**
>
> **"*Target Housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or 0-bedroom dwellings."**

V

STATEMENT OF THE CASE

1. This is the extension of an equity suit in which the plaintiffs seek to enforce the terms of a sales contract of commercial property and in which the purchasers breached without cause.

2. The property involved is historical property located in the historical section of the City of Manassas, Virginia. Improvements on the property include a manor house built at the turn of the century. The property is zoned B-3, commercial, a specific zoning for the historical section. The manor house is a two-story frame structure that has probably been painted many times with lead-based paint in past years. This is the heart of the problem.

2. Tests confirm the presence of lead-based paint but also show the paint in good condition, and presented no hazard for this property. The purchasers were appraised of this fact and given a 10-day window from the date they received the results of the tests during which they could cancel the contract, if they so wished. They declined to do so.

3. Approxametly one months later and a few days before the scheduled settlement, the purchasers informed the sales representative that they were cancelling the contract because of their concerns about the lead-based paint. The sellers rejected this act as not being timely and without authority. The purchasers failed to make the settlement. The terms of the contract had been drawn up by the buyers and presented to and accepted by the sellers, without change. These

terms were that the sale of the property was "AS IS" and for cash. The matter of the lead-based paint was irrelevant, also, the buyers did not alledge that there was any hazard.

4. This equity suit was heard in the Prince William County Virginia Circuit Court and the judge found for the defendants. Judge Hoss found that the contract was complete inasmuch as the sellers had accepted and signed the contract offer presented by the buyers, without change, but that the contract itself did not comply with certain required provisions of paragraph 28 which reads, and he then quotes a part of paragraph 28 as follows:

> "This contract is not complete and not ratified unless it includes and the sellers and the purchasers both accept, the following two ammendatory forms: A. 'Sales Disclosure and Acknowledgement of Information on Lead-Based Paint and/or Lead-Based Paint Hazards' AND B. 'Sales Contract Addendum for Lead-Based Paint Testing'."

5. The benefits that would have been given the purchasers, had these forms been included, were given to them on a gratuitous basis at the buyers request and under another

addendum, but not on the forms specifically identified above. The defendents have never complained to the sellers that they were denied any benefits under this action. Nevertheless the judge passed judgment and ruled:

> ", , , but the fact is, and there can be no dispute about this, they (the ammendatory forms) were not made a part of the contract, as required. Without these forms being made a part of the contract, the provisions in them providing for how to cure this problem, if there was one, any paint problem or radon problem is of no moment as I see it. This contract is not complete. The Buyers could terminate the same as they did in a fairly timely fashion. I find for the defendants."

6. The specific forms were not included because it was the contention of the sellers, then, as it is now, that they were not required by law or for any administrative purposes. It would appear from the ruling that the contract would have been made whole had only blank forms been included.

7. There is a more serious side to this issue. The appellants assert that Judge Hoss took his authority for the ruling and judgment out of

context from what paragraph 28 actually states. He failed to include the qualifying phrase immediately preceeding his quotation which reads:

> **". . . unless exempt under 42 U.S.C. 4852d . . ."**

This property is clearly exempt under the cited authority and, therefore, the remainder of paragraph 28 is a nullity.

8. 42 U.S.C. 4852d applies only to targeted residental properties identified as dwellings. And then only to dwellings with attached bedrooms. The property which is the subject of this appeal is commercial property and not a dwelling. Furthermore, the definition of targeted properties exempts all properties that have 0-bedrooms. This property, as commercial property, has no bedrooms.

9. During the trial and particularily during the rehearing the plaintiffs made it clear to Judge Hoss that this property was not residential property and as such was not subject to the safeguard requirements of 42 U.S.C. 4852d. Likewise, the attorney for the defendants stated in his opening remarks "I agree the contract has a provision, 42 U.S.C. -59, if that applies as a

paragraph there, that section applies to residental housing. It does not apply to commercial housing. We agree with that."

VI

REASONS FOR GRANTING THE PETITION

1. The Prince William County Circuit Court of Virginia ruling confirmed by the Supreme Court of Virginia has decided an important question of federal law that has not been, but should be settled by this Court.

2. The Circuit Court has arbitrarily extended the mandatory requirements of 42 U.S.C. 4852d and related and supporting laws and regulations with reference to lead-based paint and its applicartion to residential properties to include commercial properties. The Virginia courts established a highly detrimental precedent when they ruled that this sales contract of commèrcial properties constructed prior to 1978, could not be adjudged ratified unless it also included the provisions for lead-based paint testing giving the buyer an option to cancel the contract if the seller does not remedy any hazards that would be identifiable under the standards established exclusively for targeted residential properties.

3. The Supreme Court of Virginia found no "reversible error" in this ruling. This ruling is adverse to the interests of a large and important class of property owners. Particularily hard hit by this ruling, but not exclusively, are owners of historical properties who have, or plan to restore or renovate older properties for their preservation and subsequent use as commercial properties to help pay for the cost, such as this property. This property was purchased over twenty years ago and has been under various stages of restoration ever since. This is not an endeavor one goes into for profit. It costs approximately one and one half times as much to restore these properties than to build them from the ground up. The costs of abatement treatment required under 42 U.S.C. 4952d would exceed the value of the property in many instances. Preservation interests are performed by those interested in and dedicated to the preservation of the history and culture of our nation. Once restored many of these properties are used to house activities with similar interests. This property has had only one tenant--The Center for the Arts, a nonprofit organization serving the City of Manassas and Prince William County. The rulings of the Virginia courts will curtail this in the future.

4. It has been argued that the impact may not be so great in the future because in future court cases the judges may be more tolerent of the federal statutes. As preservationalists we must submit that there may not be many future cases. This ruling has not gone by unnoticd. Most restoration efforts require some financing. No financial institution will finance a sales contract that cannot be ratified and where any title will be clouded. Those who are financially able will not invest in property where there is very little hope, if any, of ever recovering their investment in the furure.

5. The extension of the mandatory requirements of 42 U.S.C. 4952d by Judge Hoss to include commercial properties should never have happened, but it did. It is contrary to the very laws written to protect those engaged in historical and other preservations. It is totally unecessary; there is no requirement or need for it.

6. A certiorari will correct this.

VIII

APPENDIX

A-1 Final order of the Prince William County Virginia Circuit Court.

A-2 Judgment of the Supreme Court of Virginia.

B-1 Motion for the reconsideration of the Final Order, Prince William County Circuit Court.

B-2 Petition for Reconsideration of the judgment of the Supreme Court of Virginia.

VIRGINIA
IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

RUSSELL D. MIKEL, et. al.,	)	
	)	
Plaintiffs	)	
vs.	)	Chancery No.
42800	)	
	)	
RUTH ALLEN, et al.,	)	
	)	
Defendants	)	

FINAL ORDER

THIS MATTER CAME BEFORE THE COURT for trial on plaintiffs Bill of Complaint for Specific Performance on July 15, 1998, the plaintiffs, Russell D. Mikel and Amy C. Mikel represented by their attorney, Zachary B. Cotner, Esquire, and the defendants, Ruth Allen and Mae wendorf, represented by their attorney, Charles G. Preston, Esquire.

WHEREUPON, the court having examined the services of process and the duly executed returns thereon, the pleadings, the contract sued on, the subsequent agreements of the parties, the exhibits of this case, and the answer, and and considered the testimony of the witnesses at trial, it is *(cont'd)*

determined that the Defendents are entitled to judgement, it is therefore

ADJUDGED, ORDERED AND DECREED that plaintiffs Bill of Complaint to specific performance be and the same is radon provisions of the contract were part of the contract, and as required by the conduct of the parties, but were not included in the contract by plaintiffs' agent, accordingly the contract was not complete and Defendants could properly terminate as they timely did, and it is further

ADJUDGED, ORDERED and DECREED that the clerk of court is hereby directed to send a copy of this order to all counsel and parties of record.

ENTERED THIS 28th day of August, 1998.

I ASK FOR THIS

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(703) 759-3301
/s/Charles G. Preston
Virginia Bar Number 26873
Counsel for Defendants

Seen and Excepted to

/s/Russel D. Mikel
/s/ AmyC. Mikel

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 12th day of February, 1999.

Russell D. Mikel, et. al.,
Appellants

against **Record No. 981995**
Circuit Court No. 42800

Ruth Allen, et. al..
Appellees

From the Circuit Court of Prince William County

Upon review of the record in this case and consideration of the arguments submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment comp;lained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

By: /s/_____
Deputy Clerk

V I R G I N I A : IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

Russell D. Mikel, et. al.	)	
	)	
Plaintiff	)	**Chancery No. 42800**
	)	
vs.	)	
	)	
Ruth Allen, et. al.,	)	
	)	
Defendants	)	

ORDER

This cause came on this day to be heard on August 28, 1998 upon Plaintiffs' Motion for Reconsideration of the Judgment of July 15, 1998 of this Court denying Plaintiffs' cause of action and dismissing the case, and was argued by counsel for Defendants and by Mr. Mikel, pro se, for plaintiffs.

Upon consideration whereof, the Court, being of the opinion that said motion should be denied, it is therefore. ***(cont'd)***

Adjudged, ordered, and decreed that Plaintiffs' Motion for Reconsideration of this Court's rulings of July 15, 1998 in this matter is denied.

Entered this 22 Day of September, 1998

/s/_____
JUDGE FRANK A. HOSS, JR.

I ASK FOR THIS:

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 16th day of April, 1999.

Russell D. Mikel, et. al.,
Apppellants

against Record No. 981995
Circuit Court No. 42800

Ruth Allen, et. al.
Appallees

Upon a Petition for Rehearing

On consideration of the petition of the appellants to set aside judgment rendered herein on the 12th day of February, 1999 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy.

Teste:
/s/_____

Clerk

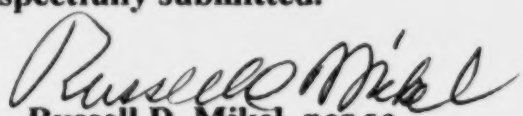
APPENDIX B-2

VIII

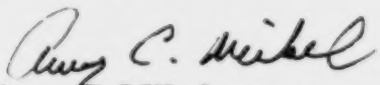
CONCLUSION

It is concluded that the Petition for Writ of Certiorari should be approved.

Respectfully submitted.



Russell D. Mikel, *por se*



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Honorable David B. Beach, Clerk
Supreme Court of Virginia
100 North 9th Street
Richmond, Virginia 23219

Supreme Court, U.S.
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OFFICE OF THE CLERK

No. 99-111

In The

Supreme Court of the United States

RUSSELL D. MIKEL, *pro se* and
AMY C. MIKEL, *pro se*,

Petitioners,

vs.

RUTH ALLEN and MAE WENDORF,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Virginia

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

I. WAS JUDGMENT PROPERLY ENTERED FOR RESPONDENTS BY THE PRINCE WILLIAM COUNTY VIRGINIA CIRCUIT COURT IN HOLDING THAT THERE WAS NO CONTRACT BETWEEN THE PARTIES BECAUSE PETITIONERS' AGENT FAILED TO OBTAIN TWO REQUIRED CONTRACT ADDENDUM.

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STATUTES

42 U.S.C 485d 7

OPINION BELOW

The Prince William County Virginia Circuit Court on August 28th, 1998 issued its opinion finding that there was no contract between the parties because the real estate agent had failed to include in the contract lead based paint and radon addendum provisions required by the Respondents' contract offer.

The Prince William County Virginia Circuit Court on September 22, 1998 denied Petitioners' Motion for Reconsideration.

The Supreme Court of Virginia refused the petition for appeal in finding that there was no reversible error in the judgment complained of on February 12, 1999. The Motion to Reconsider was denied on April 16, 1999.

The relevant Orders are recited in Mikels' petition in Section VII Appendix, pp. 15-21.

STATEMENT OF THE CASE

Petitioners filed a Bill of Complaint for Specific Performance "(hereinafter Mikels or Bill of Complaint) with the Circuit Court of Prince William County Virginia, which alleged that Respondents Ruth Allen and Mae Wendorf (hereinafter Allen) breached a sales contract to close a real estate transaction with Mikels for the purchase of a piece of property located in Prince William County, Virginia ("Property"). Mikels alleged that there was a final contract and Allen denied that there was a

final and binding contract because two contract addendum required by Allen's contract offer had not been executed.

Allen filed an Answer and the case was tried before the Honorable Frank A. Hoss, Jr., on July 15, 1998. The trial lasted approximately four hours, and four witnesses were called upon to testify. The Mikels called the real estate agent, Ms. Tortorette, who negotiated the contract with Ruth Allen and Mae Wendorf, and Mr. Mikel. Allen and Wendorf each testified for themselves.

On September 28, 1998 an Order was entered finding for Allen and Wendorf. The trial court found that:

> "since I find that the lead based paint and radon provisions of the contract were part of the contract, and as required by the conduct of the parties, but were not included in the contract by Plaintiffs' agent, accordingly the contract was not complete and Defendants could properly terminate as they timely did."

The Mikels filed a Motion to Reconsider, on grounds substantially the same as advanced at trial and in this Writ of Certiorari, which was denied by Order of September 22nd, 1998.

The Mikels filed their appeal to the Supreme Court of Virginia on September 15, 1996. The Court refused the petition for appeal in finding that there was no reversible error in the judgment complained of on February 12, 1999. The Motion to Reconsider was denied on April 16, 1999. This Writ of Certiorari was filed on July 12, 1999.

STATEMENT OF FACTS

The Mikels had listed a property for sale at 9001 Center Street, Manassas, Virginia 20110. They were represented by a real estate agent for Long and Foster. The agent negotiated a sales contract on September 14, 1997, with Allen and Wendorf.

At the trial, Mikels' real estate agent's sales contract was shown to provide on page 6 for six check the box items, under paragraph 29 entitled "Additions". There was a box to check for "yes" I want that addendum, or "no" I do not want that addendum. Two boxes were check yes. The first was for "RADON ADDENDUM", and the second was for "LEAD-BASED PAINT AMENDATORY FORMS".[1]

The evidence showed that neither of these two addendums were finalized by the real estate agent for signature by the parties, as required by the purchasers Allen and Wendorf. These Long and Foster real estate agency's addendums provide for substantive rights to the purchaser should Radon or Lead-Based Paint be found, i.e., corrective action or contract termination. The Court found this failure by the Sellers' real estate agent to have obtained the two executed addendums fatal to a finding that there was a completed and binding contract.

The Judge stated his findings at trial as follows:

> "The lead based paint and radon provisions of the contract used were made a part of this contract both expressly and by the conduct of the parties.

---

[1] The Sales Contract was Exhibits 2 and 3 at Trial.

It's clear that the agent who prepared this contract was the agent for the seller. It's made clear to everyone and clear in the testimony today. And I cannot say that this was some trivial part of the contract. It was, in fact, an important part of the contract. Much evidence was put on today and I believe in fact, it was of some significance to the contract as a whole.

If you read what the contract says about this item, it says, "This contract is not complete and not ratified unless it includes, and the seller and the purchaser both accept, the following two amendatory forms A and B," and it describes the forms.

I can't tell from the way they describe on these the two forms that I've been provided that were used in the January 14th contract, but apparently, they are – these forms were not – they were signed. They were not made a part of this contract even though the contract clearly provided that the building was of sufficient age to require it and the boxes were checked as they were provided for.

And even further, language is inserted into the contract by hand relating to the question of radon and lead paint testing and it's put in there about who's going to pay for them; nevertheless, still an integral part of the agreement and what these people were doing on this date.

In my view, the complainants cannot rely on any notion that since it was commercial property, it was not needed. It may not have been needed. If it had gone to contract originally as it probably should have been, it would not, perhaps, have been included. But in this case, it

was made very clearly a part of this contract whether it was needed or not.

Also, I don't think the complainants can rely upon the fact that the defendants would not sign them at the time the offer form was filled out. I can't really say – I'm not sure whether they were offered and refused as the agent said or were not offered and, perhaps, just overlooked as the defendants say, but the fact is, and there's not dispute about this, they were not made a part of this contract as was required.

Without these forms being a part of the contract, the provisions in them providing for how to cure this problem, if there was one, any paint problem or radon problem is of no moment as I see it. This contract is not complete. The buyers could terminate the same as they did in a fairly relatively timely fashion, I find for the defendant."[2]

---

[2] Trial transcript pp. 201-203.

ARGUMENT

I. CERTIORARI IS NOT WARRANTED BECAUSE THE TRIAL COURT PROPERLY FOUND FOR DEFENDANTS RUTH ALLEN AND MAE WENDORF GIVEN THAT THE CONTRACT WAS NOT COMPLETED IN A MATERIAL RESPECT.

A. It is within the province of the trial court to assess the credibility of witnesses and the probative value of their testimony.

It is within the province of the trial court to assess the credibility of witnesses and the probative value to be given to their testimony. *Langman v. Alumni Assoc. of the Univ. of Virginia*, 247 Va. 491, 504, 442 S.E.2d 669 (1994), cite in *Richardson v. Richardson*, 242 Va. 242, 246, 409 S.E.2d 148, 151 (1991).

B. If the trial court is not plainly wrong, its findings defeat alternative theories and must be affirmed.

Where the trial court's findings regarding the significance of the two addendum to the contract, given the testimony of the witnesses and the contract, is not plainly wrong, these findings defeat alternative theories, and the trial court did not err in refusing to adopt another meaning or intent. *Langman v. Alumni Assoc. of the Univ. of Virginia, supra* at 504.

Given that it is the role of an appellate court to determine whether the trial court's decision is plainly wrong or not supported by the evidence, taking into account the principle that the trial court's decision comes

to the appellate court with a presumption of correctness, the trial court's findings must be affirmed. *Cooper v. Cooper*, 249 Va. 511, 457 S.E.2d 88 (1995), citing *Surf Realty Corp. v. Standing*, 195 Va. 431, 435, 78 S.E.2d 901, 904 (1953).

C. The trial court properly found that no contract was created.

For there to be a binding real estate contract, all the terms must be agreed to. Here, two critical and required addendum to the contract were not finalized by the real estate agent with the Purchasers for presentment to the Sellers. Accordingly, there was no meeting of the minds, and no completed contract. The Allen and Wendorf termination of the uncompleted offer on October 24, 1997, was appropriate. There was no contract to accept because conditions precedent to a completed contract offer were not fulfilled. It actually was a termination of negotiations to enter into a contract.

Mikels' argument that the statutory language of 42 U.S.C. 485d, cited in paragraph 28 of the contract has no application to commercial property is irrelevant to this case. The Purchasers specifically request the Radon and Lead-Based Paint addendum to enter into the contract. There is no prohibition from using such forms in a commercial transaction, where the parties want the rights and protections these forms provide, and the Court so held.

It is noted that the Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazard form, provided to the real estate agent by Sellers at the time of the listing, and disclosed to the Purchasers by attachment

to the contract, was marked by the Mikels that "Seller has no knowledge of lead-based paint and/or lead based paint hazards in the housing." Yet in its Certiorari, Statement of the Case, paragraph 2, Mikels state that "The Purchasers were appraised of this fact". Given the obfuscation of the existence of Lead-Based Paint it is understandable that Purchasers wanted the protections of repair or contract termination provided by the form, and why the agent did not want to include the forms since there would be no contract signing by Sellers permitting those rights to Purchasers, knowing that there was in fact Lead-Based Paint. The intent to mislead the Purchasers is clearly evident.

Mikels' real estate agent did not have commercial real estate purchase forms in her office, and therefore used residential real estate purchase forms to write up the contract. These forms include the check the box options.[3] The Purchasers availed themselves of this option by specifically checking "yes" for Radon and Lead Based Paint forms. Mikels cannot now complain against Allen and Wendorf for their agent's mistakes, there being no prohibition in the use of the addendum. While the forms may not apply in a given situation by federal law, the contacting parties are not prohibited from requiring the benefits the forms provide in non-statutory situations.

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[3] Transcript of Trial, page 60.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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